



## WineAmerica Newsletter – June 2009

### From The President's Desk

The economy seems to be improving. Economists claim we are spending more and relaxing a little as consumer confidence slowly recovers. There is reason for guarded optimism for increased tasting room traffic as the movement toward supporting locally produced foods and beverages gains momentum around the country and gasoline prices remain much lower than at this time last year.

Nevertheless, we face real and

It is unlikely that these folks are “out to hurt American wineries,” it’s just that there is always legislative collateral damage and unintended consequences and this time we seem to be caught in the crossfire. So in this difficult time it is more important than ever to work in unison, support your trade association and pull together for the common good as we gear up our grassroots winery machinery to make our case to Congress and the Executive branch. We have our work cut out for us.

proposal would increase the excise tax on table wine from \$1.07 per gallon to \$3.50 per gallon. Such a tax does not nearly provide enough money to pay for the major health care changes required. Nevertheless, the alcohol tax option has some momentum because of perceived, though inaccurate, arguments linking alcohol consumption to the health care cost of alcohol abuse. The notion is that raising the price of alcoholic beverages would reduce consumption and hence abuse. As

*Proposals for a massive excise tax increase and multiple fees may threaten the very viability of American wineries.*

what sometimes seem like overwhelming public policy challenges. Partly, this is a result of a new administration with a strong mandate bolstered by Congressional majorities seeking major changes in government policies without fully thinking through the consequences. To some extent, this dilemma highlights the key role played by trade associations in educating the legislative and executive branches.

#### Taxes

A major threat comes in the form of a Senate proposal a proposal that would impose a huge increase in the wine excise tax as one option for funding health care reform. The option of switching to an excise tax of \$16 per proof gallon has been on the table for a long time and it has been dusted off to be considered as a means of paying for health care reform. The

we have noted many times before, reducing per capita consumption is not the same as reducing abusive consumption. It should be emphasized that while this is just one of many options, the threat posed by the increase is substantial.

As we have pointed out in our recent e-zine on the topic, the Senate Finance Committee is our  
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main target. They will be meeting behind closed doors later this week. Our key point is that the government should not be in the business of picking winners and losers. Moderate consumption of wine and other beverages actually is a factor in controlling and reducing health care costs, and the decimation of a significant bright spot of the rural economy is a silly and counterproductive endeavor. But other issues should not be ignored. It is important that faxes to be sent to members of the committee and to your Senators and Representatives. Our position paper can be found in the Newsroom section of our website [www.wineamerica.org](http://www.wineamerica.org).

### Fees

There are two major proposals before Congress that would impose new and punitive fees on wineries. The first, from the House Energy and Commerce Committee, calls for a \$1,000 or greater yearly fee to pay for food safety inspections. The second, proposed by the administration as part of its budget documents, is a reestablishment of the Special Occupational Tax, masked as a “user fee” to support TTB operations and likely to cost most wineries at least \$1,000 per year. It will be considered by the Appropriations Committees in both House and Senate. The actual decision on the TTB user fees is likely to be made by the Financial Services subcommittees.

WineAmerica has been working these issues for some time now, although the TTB user fee has only been public for a few weeks. We have position papers on both of these issues on our web site, Newsroom section [www.wineamerica.org](http://www.wineamerica.org).

Please pay attention to and respond to our e-zines and legislative alerts as we try to marshal a broad and effective grassroots effort on behalf of American wineries. Proposals for a massive excise tax increase and multiple fees may threaten the very viability of American wineries.

### Other Legislative Concerns

In addition to proposed new fees, the President’s budget calls for eliminating so called “mandatory funding” directed by last year’s Farm Bill for the National Clean Plant Network (NCPN) and reducing some other pest management spending in the APHIS account. In addition, there is a proposed ten percent reduction in funding for the Market Access Program (MAP) which supports export of farm products from the United States. These proposed cuts represent a significant pulling back from the concepts agreed to in the 2008 Farm Bill and would represent a break in the good faith compromises which allowed the bill to be passed over two Presidential vetoes. The Specialty Crop Farm Bill Coalition, including

WineAmerica, has written a letter to the Appropriations Committees on this important issue. It is hoped that the Appropriators who are in charge of addressing this Presidential request will support the key specialty crop components of the Farm Bill.

Since its inception in 1995, the Viticulture Consortium (V.C.) has been a central element in the funding of grape related research that is relevant and timely to grape growers throughout the country. Currently the V.C. has been losing support in a fiscally nervous Congress. This is because its funding mechanism, a “special grant” requiring specific annual Congressional appropriation, looks like a special interest earmark, rather than the nationwide competitive program it truly is. We will need to get the message out about how this vital research support function brings together industry with the research and extension community to provide the practical research necessary to maintain our industry’s competitiveness.

AgJOBS, the bill which reforms laws governing foreign agricultural workers, making it much easier to have a legal and relatively easily managed workforce, is gathering momentum as part of overall immigration reform. Bills have been introduced in both the House and Senate. Still, this issue remains a difficult lift. There will be more

information to report as Congress progresses in the next few months.

### **A New Administration**

When a new administration takes over, they bring with them a host of new policy makers who must be educated in the values and needs of America's wineries. Current economic conditions make this challenging as our industry is not a priority on anyone's list. That being said, as the new Administration takes shape, WineAmerica is aggressively and creatively reaching out to key people in areas of most concern to wineries. We are seeking to engage in dialogue whenever and wherever there are opportunities to be heard by those in a position to support us.

Prime areas of concern include:

**Department of Agriculture.** We will focus on research mission, value added, rural development, APHIS (pest management), the general importance of wineries to rural communities and educating about the importance of non-subsidized agriculture.

**Department of the Treasury.** We need to educate new people to help them understand the tax and regulatory structure of wineries. While the department is now focused almost entirely on the financial crisis, it is important that our hyper-regulated and taxed industry make its case about how important American wineries are for the rural economy.

### **Other Issues**

We continue to work to support negotiations with the European Union concerning their moves to regulate Traditional Expressions such as "Chateau," "Clos," and "Sur lie." Since the WineAmerica March meeting in Washington where we proposed definitions for the entire series of terms, we have made much progress in this area. However, we have yet to come to an agreement on the crucial issue of trademarks such as "Chateau Ste. Michelle," a name in use for decades in the United States.

We now have dates for our next Fall and Spring meetings. In November, we will meet in Fredericksburg, Texas from November 16-19. This meeting will feature broad and in-depth discussion of issues facing WineAmerica, some touring of Texas wineries, and a Board meeting. Our 2010 Washington wine and grape policy conference will be held March 14-17 where we hope to build a better understanding of the new administration and Congress. Please plan to attend these meetings which are central to directing and executing the policy direction of WineAmerica.

### **Bottom Line—WineAmerica Membership is Critical**

A strong and representative membership is the key to WineAmerica's effectiveness. Our

Membership Committee is currently preparing for a major membership drive by mapping a peer-to-peer recruiting plan. It is critical that America's wineries, particularly in the challenging environment that currently exists, support WineAmerica as the grassroots organization that represents their interests. WineAmerica is only as strong as our membership. FedEx is also making a pitch for our joint discount partnership on all shipping through FedEx. These are very substantial discounts which are a benefit of membership and in many cases will provide more than enough savings to cover the cost of WineAmerica membership.

The stronger WineAmerica becomes as an organization, both in terms of numbers of winery members and in dollars, the greater will be its ability to protect and advance winery interests. Congress and regulatory agencies respond to organizations that have the muscle of grassroots. Greater involvement by wineries across the country will help position WineAmerica to be an effective advocate. Peer-to-peer recruiting is the most effective mechanism to recruit new members and to more fairly distribute the burden of advocacy. **Please urge your fellow wineries to join and support WineAmerica.**



## Legal Notes – Rethinking the Three-Tier System

by Cary Greene

Following my recent trip to the annual Wine & Spirits Wholesalers Association (WSWA) conference in Florida, we started thinking about the future of wine distribution. Some of this thinking concerns direct-to-consumer shipping and how to make it less costly and time consuming, but more of it relates to the three-tier system. We recognize it's a controversial subject.

The history of three-tier and winery-wholesaler relations rightly elicits strong feelings. Throughout the past two decades, wholesalers have repeatedly served as a block to interstate wine sales—often exercising their influence to restrict interstate markets, while tolerating some flexibility for local producers. There is justifiable concern that the Supreme Court's support for evenhanded interstate direct shipping stated in *Granholm v. Heald*, 544 U.S. 460 (2005) caused wholesalers to reevaluate their strategy to the detriment of local wineries. Nevertheless, finding reasonable compromises holds out clear benefits for wholesalers.

It should be noted that rethinking the three-tier system to find a more practical distribution mechanism probably means changing state laws in a fairly

dramatic manner, something which is not likely to happen quickly. On the other hand, it's important to consider whether there are ways forward that can reduce the friction between the tiers, and perhaps create the conditions for instituting new laws that work better for wineries.

Even if we played a thought experiment and wiped out all the 1930's era laws mandating the three-tier system, a wholesale distribution system—albeit taking into account the market needs of 6,000 wineries—would still be needed. This is a matter of practicality more than legal restriction. Wholesalers currently perform at least three functions: (1) aggregate product and knowledge; (2) handle order logistics and payment; and (3) deal with the physical logistics of moving product. These tasks are critical to a functioning distribution system, even one that fits the existing marketplace. The real quandary is developing a functional distribution system that recognizes market conditions, is profitable, and serves the needs of all parties.

The consolidation of the wine wholesale tier creates a market opportunity for new wholesaler models to emerge, provided state law is made flexible enough to

accommodate these new models and wineries and wholesalers become more willing to engage each other. These models would make better use of modern logistical and technological systems like the internet and overnight carriers. They would take into account the context of the new marketplace and the needs of smaller wineries, including the need to develop markets for brands and varieties that are not well known. They may even include new kinds of “wholesalers” that provide logistical and marketing support for what has traditionally been thought of as self-distribution. If profitable and functional models can be found, it could provide the impetus for moving state laws in a more favorable direction.

At least on a national level, the wholesalers are reaching out to us. It's one of the reasons we attended the annual WSWA convention. At this point, the steps are obviously preliminary and tentative—perhaps nothing new will emerge from the effort. But there is a desire to find common ground and to develop business models that can work for WineAmerica members. It's at least a start.



## Regulatory Notes

by Michael Kaiser

### **TTB FY 2010 Budget Includes Annual Fees**

On May 7, the White House released its detailed FY 2010 budget proposal. The proposal calls for the Alcohol & Tobacco Tax & Trade Bureau (TTB) to raise up to three-quarters of its budget (\$84 million of a total \$109 million) through annual fees assessed on the alcohol beverage industry, which would include beverage alcohol producers, distributors, importers, retailers and tobacco companies.

The budget does not lay out how the user-fees will be distributed, but at least half the fees will be derived from programs to “protect the public” and the other half from programs to “collect revenue.” The budget describes these fees as “reimbursements,” but in reality they are charges for a service that is already mandated by federal law. This would move TTB from an appropriated agency to a self-funded agency.

The current proposal calls for an annual fee due every July 1. Bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses would be required to pay \$1,000 per year for each of its facilities. The proposal would limit the annual fee to \$500 if a

winery’s gross receipts for the year are less than \$500,000. Accordingly, these “new” fees would be nothing more than a re-imposition of the Special Occupational Tax (SOT) repealed in 2005.

As it currently stands, licensed beverage producers and importers pay close to \$10 billion per year in federal excise taxes. This is 100 times TTB’s proposed budget of \$109 million. Domestic wineries alone paid close to \$900 million in federal excise taxes in 2008.

Many of you may remember, TTB “user-fees” were first proposed in 2005 for FY 2006. WineAmerica, working with Senator Murray (D-WA), a recipient of our Wine and Grape Leadership award in 2006, helped defeat that proposal. Congress must actually pass legislation authorizing the fees in order for them to be enacted. WineAmerica is strongly opposed to TTB user fees, and will lobby for their defeat once again. We will provide you with more details as they emerge this summer.

### **TTB Reaches Out to Industry Representatives**

On May 20, TTB held a meeting at its Washington, D.C. headquarters for representatives of licensed beverage producers.

The purpose of the meeting was to update the industry on the status of Alcohol Labeling & Formulation Division (ALFD) initiatives.

TTB’s focus was on a mandatory streamlining of its programs given budgetary constraints. While ALFD staffing will remain for the time being at current levels, ALFD will not be hiring any new staff, even if they lose staff members. This could lead to longer turnaround times on label processing (both electronic and paper). In addition, TTB emphasized that they are striving to put wine, beer and spirits on the same label approval timetable which could also mean a longer turnaround for wine labels.

Finally, TTB stressed that they will be making a concerted effort to reach out to the industry and try to become more “user friendly.” As part of this process they will hold more industry informational meetings. TTB will also be holding their second industry wide expo in Covington, KY next month. I will be attending as WineAmerica’s representative. If you have any specific questions or concerns for TTB please feel free to contact me and I will pass them along.



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## Appellation America's Best of Appellation Evaluation Program

Submitted by Roger King (Appellation America)

Appellation America, North America's online wine publication dedicated to defining the diversity or regional character in wines, set out in 2008 to develop regional profiles under its Best of Appellation (BOA) program. The results are starting to truly paint the diversity of wines produced in all corners of the United States.

Based upon the premise that a wine is shaped by the influences of the region it is grown in, rather than a flat understanding of varieties regardless of their terroir or local wine making culture, the Best of Appellation program has ambitious goals of defining regional diversity across all US AVA and Canadian DVA, as well as State Appellations and County Appellations. BOA evaluations have been undertaken in multiple California regions as well as the State of Iowa and the State of New York.

Moving into 2009 current programs in progress are Ohio (State Appellation) and it's 6 AVAs, Idaho (State Appellation), Temecula, Madera and Mount Harlan AVA in CA, and Long Island, New York.

The BOA is a different process and not a competition or scoring such as

typically found in conventional judgment of wines. Rather it seeks to find the thread or footprint of regional diversity that defines a region on a varietal by varietal basis. Done correctly the outcome can speak to what a consumer should expect when tasting a specific varietal wine from a region rather than comparing two same-varietal wines regardless of their origin and trying to make a judgment on quality.

Once the regional footprint has been identified the submitted wines are reviewed based upon which ones do the best job of expressing those defining traits of 'place.' Those wines and wineries are then elevated to Best of Appellation status and the wines are placed on the Best of Appellation wine list for consumer review.

The evaluation panels, headed by Clark Smith, are formed with trained enological professionals who use objective criteria in searching for regional diversity, disregarding any personal preferences. More can be learned about this unique and innovative program by using this link: <http://wine.appellationamerica.com/wine-tasting-index.aspx>.



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## Upcoming Meetings—Save the Dates

November 16-19, 2009 — Fredericksburg, Texas

March 14-17, 2010 — Washington, D.C.